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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

EDWARD MC ELMURRY and EVA  
MC ELMURRY, INDIVIDUALLY and  
the marital community thereof,  
Plaintiff,

vs.

RUSSELL INGEBRITSON and JANE  
DOE INGEBRITSON  
INDIVIDUALLY, and the marital  
community thereof and AGENTS/  
OWNERS OF INGEBRITSON and  
ASSOCIATES, A MINNESOTA  
ENTITY,

Defendants.

Case No.:

COMPLAINT FOR LEGAL  
MALPRACTICE- JURY DEMAND

JURY DEMAND

COMPLAINT FOR LEGAL MALPRACTICE- JURY  
DEMAND

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JURY DEMAND - 1

**I. SUMMARY**

1.1 Russell Ingebritson missed the three-year statute of limitations by not filing Federal Employer's Liability Act (FELA hereafter) suit on behalf of his clients Edward McElmurry and Eva McElmurry after Edward McElmurry was injured while working for BNSF.

**II. PARTIES AND JURISDICTION**

2.1 Edward McElmurry and Eva McElmurry are residents of Washington and live within the Eastern District of Washinton.

2.2 Russell and Jane Doe Ingebriston are residents of Minnesota.

2.3 Upon information and belief, Ingebretson and Associates is a Minnesota entity.

2.4 The underlying accident causing injury and Ingebritson's failure to file suit within the statue of limitations and other professional negligence occurred within Spokane County, Washington and within the Eastern District of Washington under 28 USC 1391 (b) making venue proper in the Fed. Dist. Ct. for Eastern District of Washington.

1 2.5 Federal jurisdiction exists under 28 USC 1332 as all plaintiffs and  
2 defendants are citizens of different states and this matter in  
3 controversy exceeds \$75,000 in value.  
4

5 2.6 Plaintiffs special damages exceed \$350,000, exclusive of attorney  
6 fees.  
7

### 8 **III. FACTS**

#### 9 Facts Regarding Injury Accident/Malpractice

10 3.1 On June 15, 2012 Edward McElmurry was an employee of BNSF  
11 Railroad.  
12

13 3.2 On June 15, 2012 Edward McElmurry was injured while on the job.

14 3.3 Edward McElmurry was injured when the BNSF vehicle in which he  
15 was traveling in was rear-ended.

16 3.4 Edward McElmurry was 59 at the time of the accident.

17 3.5 Edward McElmurry began working for BNSF in 1991.

18 3.6 Edward McElmurry obtained an Associates Degree in electronics and  
19 his job at BNSF required him to install communications equipment.  
20

21 3.7 Edward McElmurry was an electronic technician based out of  
22 Spokane, Washington.  
23

1 3.8 The week prior to the accident, BNSF had short staffed the Pasco  
2 yard.

3 3.9 When a job in Pasco was short staffed other employees from other  
4 areas were made to travel to Pasco to work on the job.  
5

6 3.10 BNSF's common and frequent practice was to short staff the Pasco  
7 yard causing staffing problems and staffing shortages.

8 3.11 Edward McElmurry was ordered by his Foreman Cliff Anderson to  
9 drive to Pasco in the week preceding the June 15, 2012 accident.  
10

11 3.12 BNSF had short staffed a project in Pasco in June of 2012.

12 3.13 BNSF had also assigned a new employee to the Pasco project.

13 3.14 BNSF assigning a new employee slowed the project requiring more  
14 employee travel from other locations.  
15

16 3.15 Edward McElmurry was provided a 1997 BNSF Jeep Cherokee for a  
17 business vehicle.

18 3.16 Edward McElmurry was using his 1997 BNSF Jeep Cherokee for the  
19 return trip home from Pasco.  
20

21 3.17 Edward McElmurry was "on the clock" during the drive home.  
22  
23

1 3.18 It was Edward McElmurry's intent to get back to Spokane before 3:30  
2 p.m. to avoid overtime.

3 3.19 Edward McElmurry's drive to Spokane from Pasco was uneventful  
4 until he neared Spokane.

5 3.20 Edward McElmurry was fully restrained and traveling in the outside  
6 lane of I-90 near the Cheney-Tyler exit.

7 3.21 The traffic in front of Edward McElmurry slowed due to an accident.

8 3.22 After Edward McElmurry slowed down for this accident he was  
9 struck from behind by a large SUV traveling at full highway speed.

10 3.23 Edward McElmurry was seriously injured in the accident.

11 3.24 The Jeep Cherokee that Edward McElmurry was driving did not have  
12 reflective tape on the back.

13 3.25 A few weeks after Edward McElmurry's accident reflective tape was  
14 placed on the rear of all communications vehicles and crew hauling  
15 vehicles.

16 3.26 Edward McElmurry asked Shala Garcia, the manager of the Spokane  
17 Telecommunications Department of BNSF if the reflective tape was  
18 in response to his accident.

1 3.27 Shala Garcia stated that BNSF had been studying the application of  
2 reflective tape on the rear of its fleet of crew hauling vehicles prior to  
3 Mr. McElmurry's accident.  
4

5 3.28 Edward McElmurry was aware that in the event a BNSF employee  
6 was injured on the job the injured employee has a claim against BNSF  
7 if BNSF failed to provide a safe workplace.  
8

9 3.29 These claims are made under the Federal Employer's Liability Act or  
10 FELA.  
11

12 3.30 Edward McElmurry's union recommended attorney Russell  
13 Ingebriston to assist with the FELA claim.  
14

15 3.31 Edward McElmurry spoke to Mr. Ingebritson on the telephone in the  
16 October/November 2014 time frame.  
17

18 3.32 Edward McElmurry was having problems with his knee and wrist  
19 from the accident and Mr. Ingebritson stated that he could pursue  
20 these claims on his behalf against BNSF.  
21

22 3.33 Russell Ingebritson stated he would take Edward McElmurry's case  
23 on a contingency fee basis.  
24

1 3.34 With this statement, Edward McElmurry reasonably believed that  
2 Russell Ingebritson was acting as his attorney in the FELA claim.

3 3.35 In late 2014 Edward McElmurry handed a copy of a prior attorney's  
4 April 11, 2014 demand letter to Andrew Day of BNSF and demanded  
5 the full value of the FELA claim.  
6

7 3.36 At the same time Edward McElmurry forwarded a copy of the  
8 demand letter to Mr. Ingebriston along with some of his medical  
9 records, per Mr. Ingebritson's request.  
10

11 3.37 After Mr. McElmurry forwarded the copy of the demand and his  
12 medical records to Mr. Ingebriston, Mr. McElmurry had several  
13 telephone conversations with Mr. Ingebritson.  
14

15 3.38 Edward McElmurry told Russell Ingebritson that he wanted him to  
16 pursue BNSF for the full value of his claim.

17 3.39 Edward McElmurry told several co-workers, including Ms. Garcia,  
18 that Russell Ingebritson was representing him on the FELA claim.  
19

20 3.40 In subsequent conversation with Russell Ingebritson, he became  
21 aware that Edward McElmurry may have an additional claim against  
22  
23

1 BNSF relating to asbestosis. Mr. Ingebritson gave legal advice to  
2 Edward McElmurry on this additional claim as well.

3 3.41 In early December of 2014 Mr. Day asked Edward McElmurry to  
4 come into his office and give a statement for his FELA claim.  
5

6 3.42 Edward McElmurry called Russell Ingebritson and was instructed by  
7 Russell Ingebriston not to give a statement to Mr. Day.  
8

9 3.43 In response to Russell Ingebritson's legal advice and command,  
10 Edward McElmurry did not provide a statement.

11 3.44 In the Spring of 2015 Edward McElmurry had further conversations  
12 with Russell Ingebriston. Mr. McElmurry told Mr. Ingebritson about  
13 his ongoing problems with his knee and wrist from the accident.  
14

15 3.45 Sometimes when Edward McElmurry called Russell Ingebritson he  
16 was responsive and other times it would take a long time for him to  
17 return the phone calls.

18 3.46 After December of 2014 Edward McElmurry believed based on  
19 Russell Ingebritson's conduct that he had a FELA claim and Mr.  
20 Ingebritson was representing him for that claim and was protecting the  
21 claim against the statute of limitations.  
22  
23



1 3.47 Edward McElmurry believed that BNSF's actions of paying his  
2 medical bills related to the accident demonstrated that his FELA claim  
3 was active.  
4

5 3.48 In June of 2015, Mr. Ingebritson failed to file a FELA court action,  
6 forfeiting ability to pursue BNSF for damages.  
7

8 3.49 Edward McElmurry learned that Russell Ingebritson had allowed the  
9 statute of limitations to expire on his FELA claim.  
10

11 3.50 Edward McElmurry also learned that not filing a complaint had the  
12 effects of not commencing a FELA claim within the proper statute of  
13 limitations.  
14

#### 15 **IV. CAUSE OF ACTION – NEGLIGENCE**

16 4.1 Plaintiffs re-allege paragraphs 1.1 through 3.50 as if pled verbatim  
17 herein.  
18

19 4.2 Defendants' actions of providing legal advice and collecting medical  
20 treatment records resulted in Plaintiffs reasonably believing that  
21 Defendants were acting as his attorney in the FELA claim in the  
22 months prior to the statute of limitations.  
23

1 4.3 Defendants owed a duty to Plaintiffs to exercise reasonable care in  
2 providing legal services to Plaintiffs.

3 4.4 Defendants breached its duty by failing to fully investigate Mr.  
4 McElmurry's claim.  
5

6 4.5 Defendants' breached its duty by not filing a FELA complaint within  
7 the applicable statute of limitation.

8 4.6 Plaintiffs' damages against defendants are for the full value of his  
9 FELA claim.  
10

11 4.7 These acts occurred in the conduct of defendants' trade or commerce.  
12 The public interest has been affected by defendants conduct.

13 **V. DAMAGES**  
14

15 5.1 Plaintiffs were damaged as a consequence of Defendant's legal  
16 malpractice.

17 5.2 Edward McElmurry was permanently damaged.

18 5.3 Edward McElmurry suffered spinal injuries related to the accident.  
19

20 5.4 Edward McElmurry suffered wrist injuries in the accident.

21 5.5 Edward McElmurry incurred substantial medical expenses.  
22  
23

1 5.6 As a result of the June 15, 2012 accident, Edward McElmurry was  
2 unable to return to work due to his injuries.

3 5.7 As a result of this accident Edward McElmurry has suffered  
4 substantial wage losses.  
5

6 5.8 As a result of this accident Edward McElmurry is receiving reduced  
7 employment pension benefits through BNSF.

8 5.9 Edward McElmurry needs additional surgeries to address injuries  
9 from this accident.  
10

11 5.10 Mrs. McElmurry incurred a reduction in spousal BNSF pension, and  
12 Social Security benefits as a result of this accident.

13 5.11 Edward McElmurry has incurred at least \$342,297.77 in past wage  
14 losses since the accident.  
15

16 5.12 Edward McElmurry continues to incur wage losses as he is unable to  
17 work due to his injuries.

18 5.13 Mrs. McElmurry has incurred a loss of consortium due to these of  
19 Edward McElmurry and the marital community has been harmed due  
20 to the accident on June 15, 2012.  
21  
22  
23

**VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against Defendants, jointly and severally, in such an amount under the circumstances of the case, as are just, equitable and proper in the premises, to include but not be limited to, the following:

1. For judgment in favor of Plaintiff against each of the Defendants, jointly and severally, for all injuries and damages sustained by him in amounts to be proven at trial;

3. For judgment in favor of Plaintiffs for reasonable costs and fees incurred herein; and

4. For such other and further relief as the court deems just and proper.

BEST LAW, PLLC

*s/Ryan M. Best*

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JURY DEMAND - 12

RANDALL DANSKIN, P.S.

s/Troy Nelson

Troy Nelson

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JURY DEMAND - 13

**CERTIFICATE OF SERVICE**

I do hereby certify that on this \_\_\_\_th day of November, 2016, I caused to be electronically filed the foregoing document with the Clerk of the Court using CM/ECT System, which will send notification of such filing to the following:

Ryan Best    bestlawpllc@bestlawspokane.com,  
ryan.best@bestlawspokane.com

Troy Nelson    tyn@randalldanskin.com

I hereby certify that I caused the have mailed by Unites States Postal Service the document to the following non-CM/ECF participants: NONE.

\_\_\_\_\_  
s/ Jackie Singleton  
Jackie Singleton  
Paralegal to Ryan M. Best

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JURY DEMAND - 14